



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable A. E. Hickerson  
County Auditor  
Montgomery County  
Conroe, Texas

Dear Sir:

Opinion No. C-3757

Re: Would the commissioners' court  
have authority to refund the  
\$500.00 under the facts set  
forth.

Your recent request for an opinion of this department on the above stated question has been received.

You refer to the case of State of Texas vs. Roy Barnhill, No. 8323 in the District Court of Montgomery County and your letter reads as follows:

"The above case tried in the District Court of Montgomery County indicates that Roy Barnhill forfeited his bond of \$500.00 which was paid in cash by the bondsmen.

"Roy Barnhill was located in California and was returned to Montgomery County. He was convicted and appealed the case to the Court of Appeals, which body reversed the District Court decision and was sent back for re-trial, then dismissed by the District Attorney.

"Roy Barnhill's attorney is demanding the return of the \$500.00 bond forfeiture.

"Would the Commissioners' Court have authority to refund this cash."

The Code of Criminal Procedure particularizes each incident in the collection of forfeited recognizances and bail bonds. Without quoting these statutes, we only refer to

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them, namely Articles 424--440, inc., Vernon's Annotated Code of Criminal Procedure. It is stated in Texas Jurisprudence Volume 5, page 924:

"The undertaking of the bail is an original undertaking for the appearance of the principal to answer the charge against him. If they do not have him in court according to the terms of their obligation, the undertaking stands forfeited, the proceeding to exact forfeiture being prescribed by statute. \* \* \*

In order to compensate the county in which a criminal prosecution is had, provision is made by the Code for the payment to that county of the amounts collected from forfeited bail bonds; the sums are not required to be paid into the State Treasury for the benefit of the State at large. Article 949, C.C.P., provides in part:

"Money collected by an officer upon recognizances, bail bonds and other obligations recovered upon in the name of the State \* \* \* shall herewith be paid over by the officers collecting the same to the county treasurer of the proper county after first deducting therefrom the legal fees and commissions for collecting the same."

Article 424, Code of Criminal Procedure provides:

"Whenever a defendant is bound by recognizance or bail bond to appear at any term of a court, and fails to appear on the day set apart for taking up the criminal docket, or any subsequent day when his case comes up for trial, a forfeiture of his recognizance or bail bond shall be taken."

Section 11 of Article 4 of the State Constitution, in its grant of power to the Governor, provides in part as follows:

"\* \* \* In all criminal cases, except treason and impeachment, the Governor shall have power, after conviction, on the written signed recommendation and advice of the Board of Pardons and Paroles, or a majority thereof, to grant reprieves and commutations of

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punishment and pardons; and under such rules as the Legislature may prescribe, and upon the written recommendation and advice of a majority of the Board of Pardons and Paroles, he shall have the power to remit fines and forfeitures. \* \* \*

The Legislature has provided in this respect that "the Governor shall have power to remit forfeitures or recognizances and bail bonds." (Article 954, Vernon's Annotated Code of Criminal Procedure)

Article 439, Vernon's Annotated Code of Criminal Procedure provides:

"If, before final judgment is entered against the bail, the principal appear or be arrested and lodged in jail of the proper county, the court may, at its discretion, remit the whole or part of the sum specified in the bond or recognizance."

It is stated in Texas Jurisprudence, Volume 5, page 933 that:

"This statute grants authority to the trial court to remit a forfeiture taken, and also leaves it to the discretion of the court as to whether or not such a remission shall be made. This discretion is confided to the trial judge, and not to the Court of Criminal Appeals; and it is only in those cases where the record discloses that the trial court has abused discretion that the court on appeal will disturb the judgment. \* \* \*

In addition to the discretionary power which the courts are clothed to remit the whole or a part of the forfeiture, it appears that remission may be a matter of right. Article 440, Vernon's Annotated Code of Criminal Procedure provides:

"When the principal appears before the entry of final judgment, and sufficient cause is shown for his failure to appear before the forfeiture is taken, and a trial is had of the criminal action pending against him, he

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shall be entitled to have the forfeiture set aside. The criminal action against him shall stand for trial but the State shall not be forced to try the same until reasonable time has been allowed to prepare for trial, and the State shall, in such case, be entitled to a continuance."

Article 436, Vernon's Annotated Code of Criminal Procedure specifically provides exclusive defensive causes which must exist in order that final judgment of forfeiture may be avoided. Referring to this statute, it is stated in Texas Jurisprudence, Volume 5, page 938:

" \* \* \* It was enacted for the purpose of confining a surety's defenses to one of those enumerated, and to prevent any inquiry as to the guilt or innocence of the principal defendant or of the validity or invalidity of the indictment. The causes which will exonerate the obligors from liability are held within narrow limits, evidencing an intention on the part of the legislature to insure the state against the burden of meeting multiplied issues of fact. In order to be exonerated from liability, the obligors must bring themselves within the provisions of this statute, which may be done only upon proper pleading in the trial court."

For the purposes of this opinion, we must assume that the forfeiture of the above mentioned bond and the collection of the \$500.00 was legally done as specified by the statutes governing forfeitures of recognizances and bail bonds. We have discussed, above, the remission of forfeitures of recognizances and bail bonds and the circumstances under which they are permitted. In view of the foregoing authorities and under the facts stated, you are respectively advised that it is the opinion of this department that the Commissioners' Court has no legal right or authority whatsoever to remit or refund the above mentioned \$500.00.

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Trusting that the foregoing fully answers your inquiry, we are

Yours very truly

APPROVED JUL 25, 1941

ATTORNEY GENERAL OF TEXAS

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ATTORNEY GENERAL

By

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